

803: Disclosure of Information

- A. No LTCO shall disclose the identity of, or any information that discloses or implies the identification of a complainant or resident involved in a complaint, report, or investigation, unless the individual (or in the case of a resident with a guardian or legal representative empowered to consent to such disclosure, such guardian or legal representative) has expressly consented to the disclosure, in writing or verbally, with the verbal consent documented contemporaneously in the case notes by the LTCO, or such disclosure is required by court order.
- B. The written consent to disclose information may be on forms developed by the Office or the Regional LTCOP, as long as the Regional LTCOP's form contains the information on the form developed by the Office, and shall be properly signed and dated. The LTCO shall not make the disclosure unless he or she has physical custody of a valid executed consent or a contemporaneously documented oral consent in case records that the LTCOP has permission to disclose. Where a resident (or his or her guardian or legal representative) has consented to disclosure, the LTCO shall counsel the resident, guardian, or legal representative as to the possible consequences of disclosure.
- C. When a request is made by any party for any LTCOP client or resident records, the Office shall be contacted immediately by telephone by the Regional Ombudsman or his/her designee. Records maintained by the LTCOP may not be released, disclosed orally or in writing, duplicated, or removed to anyone who is not a representative of the Office without the written permission of the Office.
- D. The Office shall determine whether to disclose all or part of the records as follows:
 - 1. The Office shall require that the request for LTCOP records be made in writing and may require a copy of the request before determining the appropriate response. Where the

request is made orally by a resident, complainant, or legal representative of the resident or complainant, the request must be documented immediately in the LTCOP case record by the LTCO to whom the request was communicated in order to meet this requirement.

2. The Office shall review the request with the relevant Regional LTCOP staff to determine whether the release of all or part of the records would be consistent with the wishes or interest of the relevant resident(s).
3. With advice from General Counsel, the Office shall determine whether any part of the records should be redacted (i.e. all identifying information removed). The identities of residents and complainants who have not provided express consent for the release of their names shall not be revealed.
4. The Office, in consultation with the Department's General Counsel, shall consider the source of the request (i.e. resident, facility, complainant, another agency, or any other party) and the kind of request (written request, Freedom of Information Act request, subpoena, court order) in determining whether to disclose all or any part of the records. For example, requests coming from residents should, generally, be honored by the LTCOP and the resident provided copies of records that are directly related to him and that have redacted the identity of other residents and complainants. Also, in cases of formal court discovery requests, subpoena, or court order, the Office, in consultation with the Department's General Counsel, may seek a motion to quash or a protective order where the release of records would be inconsistent with the wishes or interests of a resident.